

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6727 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

JITENDRA @ PATADI @ GARBAD AMRUTLAL PANCHAL

Versus

STATE OF GUJARAT

Appearance:

MR UTPAL M PANCHAL for Petitioner

MR DP JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/11/1999

ORAL JUDGEMENT

1. The petitioner was detained under the Gujarat Prevention of Anti Social Activities Act, 1985 [hereinafter referred to as 'the PASA Act', for short] by virtue of an order dated 23/2/1999 passed by the Commissioner of Police, Ahmedabad city, Ahmedabad in exercise of powers under the PASA Act. The detaining authority in grounds of detention recorded that the petitioner is a bootlegger and that his activities have

resulted in the disruption of public order. For arriving at this conclusion, the detaining authority took into consideration the prohibition case registered against the petitioner, so also the statements of two witnesses whose identity has not been disclosed in exercise of a right of claiming privilege u/s 9[2] of the PASA Act. The detaining authority recorded for resorting to a less drastic remedy will not prevent the petitioner from pursuing his illegal activities and therefore, the detention under the PASA Act was the only remedy which can be resorted to.

2. Ms. Patel appearing for Mr. U.M.Panchal, learned advocate for the petitioner submitted that the statements of the witnesses in respect of unregistered offences were verified by the detaining authority on 23/2/99 and on the same day, the order of detention came to be passed by the detaining authority. The detaining authority while passing the order, exercised powers u/s 9[2] of the PASA Act and claimed privilege. Ms. Patel therefore submitted that the detention would get vitiated for non-application of mind. Ms. Patel also submitted that the petitioner was in judicial custody when the detention order came to be passed. The detaining authority has not considered the less drastic remedy in the nature of opposing the grant of bail and / or getting the bail cancelled and therefore also, there is non-application of mind. The petitioner may therefore be allowed.

3. Mr.D.P.Joshi, learned AGP for the respondents submitted that factually it is true that the statements of witnesses were recorded on 22/2/99. The same were verified on 23/2/99 and the order of detention came to be passed on that very day. He however tried to justify that the detaining authority has acted vigilantly and quickly and it may not be considered as non-application of mind. Mr. Joshi factually also accepted that the petitioner was in judicial custody when the order of detention came to be passed. He also agreed that the detaining authority has not taken into consideration the aspect of resorting to a less drastic remedy in the nature of opposing the bail or of cancelling the bail.

4. Considering the rival side contentions, if the statements are recorded on 22/2/99, the same are verified on 23/2/99 and the detention order came to be passed on the very day, then there is no time consumed by the detaining authority for application of mind and considering whether it is a fit case for exercise of powers u/s 9[2] of the PASA Act. Resultantly, the

detenue can be said to have been deprived of making an effective representation. This order also suffers from another defect of non-consideration of availability of less drastic remedy and therefore also, the order in question is bad in law.

5. In Kalidas C. Kahar v/s State of Gujarat as reported in 1993[2] GLR 1659, it was considered to be a fit case for quashing the detention where the order was passed on the next date of verification on the ground that there was no time lag sufficient enough to consider the question of privilege. In the instant case, the order is passed on the same day and therefore, the impugned order of detention deserves to be quashed and set aside.

6. Another factor that vitiates the detention is that the detenue was in custody when the order was passed. Therefore, the possibility of the petitioner obtaining a bail was, at that point of time, non-existent. Abdul Razak Abdul Wahab Shaikh v/s S.N. Sinha, Commissioner of Police, Ahmedabad (AIR 1989 SC 2265)]. This is an additional ground for allowing the petition.

7. In view of the above, the petition is allowed. The impugned order of detention passed by the Commissioner of Police, Ahmedabad city, Ahmedabad, on 23rd February, 1999 in respect of the petitioner Jitendra alias Patadi alias Garbad Amrutlal Panchal, is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

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